

STATE OF NORTH DAKOTA

ATTORNEY GENERAL'S OPINION 92-03

Date issued: January 10, 1992

Requested by: Dr. Wayne G. Sanstead  
Superintendent of Public Instruction

- QUESTIONS PRESENTED -

I.

Whether the two-thirds requirement of North Dakota Century Code (N.D.C.C.) ' 15-27.2-01 applies to an annexation petition involving an exchange of property.

II.

What criteria should county committees use in determining who may sign a petition for an annexation involving an exchange of property?

III.

Whether the State Board of Public School Education must review the county committee's decision regarding the sufficiency of an annexation petition when that issue is raised on an appeal to the State Board.

- ATTORNEY GENERAL'S OPINION -

I.

It is my opinion that only one resident need sign an annexation petition involving an exchange of property; therefore, the two-thirds requirement of N.D.C.C. ' 15-27.2-01 does not apply to such an annexation petition.

II.

It is my further opinion that petitioners in property exchange annexations must physically reside on the property sought to be annexed, must be 18 years of age or older, and must meet the definition of a resident based upon principles found in N.D.C.C. ' 54-01-26 and North Dakota Supreme Court cases.

III.

It is my further opinion that the State Board of Public School Education must review the county committee's decision regarding the sufficiency of the annexation petition when the appeal is otherwise properly before the State Board.

- ANALYSES -

I.

The first issue is whether the requirement of N. D. C. C. ' 15-27.2-01 that two-thirds of the qualified electors must sign the annexation petition applies to annexations involving an exchange of property. N. D. C. C. ' 15-27.2-01 states:

15-27.2-01. Annexation of contiguous territory to school district--Petition. Territory contiguous to a public school district, whether in the same county or in another, may be annexed to the school district by the county committee after a public hearing upon written petition signed by two-thirds of the qualified electors in the contiguous territory. The county committee shall determine the sufficiency of the petition and the required number of electors necessary to constitute a two-thirds majority.

N. D. C. C. ' 15-27.2-01 is intended to apply to annexations generally. Thus, the requirement that two-thirds of the qualified electors sign the petition applies to annexations generally.

N. D. C. C. ' 15-27.2-02 states:

15-27.2-02. Restricted changes in boundaries--Petition--Requirements--Appeal. A resident or residents of a school district may request annexation of the property upon which his or their residence is situated to an adjacent school district by a petition for an exchange of property between the district of residence and the adjacent district under the following conditions:

1. The signer of the petition must reside upon the property which is requested to be annexed to the adjacent district.
2. There is an agreement for the exchange of property between the petitioners and the owner of the property in the adjacent district which property is to be exchanged for the property of the petitioner and the owner of the property in the adjoining district need not reside on the property exchanged in order to enter into the agreement.

3. The school boards of the districts involved approve the exchange of property.

4. The difference in taxable valuation of the property involved in the exchange does not exceed one thousand dollars.

Except as provided in this section, the proceedings in this section are subject to the other provisions of this chapter applicable to annexation proceedings generally. Approval of the annexation petition by the county committee and the state board must contain a finding that the requirements in this section have been met. Any school board aggrieved by the decision of another school board not to approve the exchange of property may appeal the decision to the county committee and, if aggrieved by the decision of the county committee, may appeal the decision of the county committee to the state board.

(Emphasis supplied.)

In contrast to N.D.C.C. ' 15-27.2-01 which applies to annexations generally, N.D.C.C. ' 15-27.2-02 is a special statute which applies only to annexations involving an exchange of property. N.D.C.C. ' 15-27.2-01 states that two-thirds of the qualified electors of an area proposed to be annexed must sign the annexation petition. In contrast, N.D.C.C. ' 15-27.2-02 indicates that only "[a] resident or residents" need sign an annexation petition involving an exchange of property. When a general provision conflicts with a special provision, the special provision controls. N.D.C.C. ' 1-02-07. Therefore, when an annexation involves an exchange of property, the specific requirements of N.D.C.C. ' 15-27.2-02 apply and such an annexation petition need be signed by only one resident of the property sought to be annexed.

Additional support for this conclusion is found in another sentence in N.D.C.C. ' 15-27.2-02 which states that "[t]he signer" of the petition must reside on the property. The use of the phrases, "a resident" and "the signer," indicates the Legislature intended to allow an annexation involving an exchange of property to be initiated by only one resident of the property sought to be annexed. For the foregoing reasons it is my opinion that, for an annexation involving an exchange of property, the provisions of N.D.C.C. ' 15-27.2-02 control and the petition need be signed by only one resident of the property sought to be annexed.

## II.

N.D.C.C. ' 15-27.2-01, which applies to annexations generally, refers to petitioners as "qualified electors." In contrast, N.D.C.C. ' 15-27.2-02, which applies to annexations involving an exchange of property, refers to petitioners as "[a] resident or residents." By using "resident" in N.D.C.C. ' 15-27.2-02, the Legislature indicated its intention to set different requirements for petitioners who sign a petition for annexation involving an

exchange of property than for petitioners in other annexations. It is my opinion, therefore, that a petitioner in an annexation involving an exchange of property must be a resident of the property sought to be annexed and need not be a qualified elector.

The Legislature did not define or limit the term "resident" in section 15-27.2-02. Arguably, a resident who is six years of age could initiate a land exchange annexation. Such a result is unreasonable. "In enacting a statute, it is presumed that . . . [a] just and reasonable result is intended." N. D. C. C. ' 1-02-38.

The North Dakota Legislature has indicated, by the passage of various statutes, that the age of 18 is a reasonable age for a person to acquire certain rights. An 18-year-old person is an adult, whereas a person under 18 years of age is a minor. N. D. C. C. ' 14-10-01, 14-10-02. Persons under 18 years of age may not vote, N. D. C. C. ' 16.1-01-04, use tobacco, N. D. C. C. ' 12.1-31-03, or enter into certain contracts, N. D. C. C. ' 14-10-09, whereas persons over age 18 may. Consistent with the Legislature's recognition of the significance of reaching the age of 18, I find it reasonable to conclude that a reasonable age at which a person may initiate a land exchange annexation is the age of 18.

It is therefore my further opinion that a resident who signs a petition for a land exchange annexation must be 18 years of age or older. The determination as to who is a resident is governed by N. D. C. C. ' 54-01-26 and is described in more detail later in this part II.

In addition to the requirement in N. D. C. C. ' 15-27.2-02 that the petitioner must be 18 years of age or older, the petitioners must "reside upon the property which is requested to be annexed." N. D. C. C. ' 15-27.2-02(1). It is my opinion, therefore, that not only must the petitioners in a land exchange annexation be residents of the school district who are 18 years of age or older, the petitioners must also physically reside on the property sought to be annexed.

Whether a petitioner is a resident of a particular school district is a factual issue for which I cannot give a legal opinion. However, I can set forth the criteria county committees should use to determine who is a resident. These criteria are derived from N. D. C. C. ' 54-01-26 and North Dakota Supreme Court cases.

N. D. C. C. ' 54-01-26 states:

54-01-26. Residence -- Rules for determining. Every person has in law a residence. In determining the place of residence, the following rules must be observed:

1. It is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he returns in seasons of repose.

2. There can be only one residence.
3. A residence cannot be lost until another is gained.
4. The residence of the supporting parent during his or her life, and after the supporting parent's death, the residence of the other parent is the residence of the unmarried minor children.
5. An individual's residence does not automatically change upon marriage, but changes in accordance with subsection 7. The residence of either party to a marriage is not presumptive evidence of the other party's residence.
6. The residence of an unmarried minor who has a parent living cannot be changed by either his own act or that of his guardian.
7. The residence can be changed only by the union of act and intent.

The North Dakota Supreme Court has provided guidance in determining one's place of residence. Residence is a question of fact in which the intention of the party is an important element. Wehrung v. Ideal School District No. 10, 78 N.W.2d 68 (N.D. 1956). In Schillerstrom v. Schillerstrom, 32 N.W.2d 106, 115-116 (N.D. 1948), the North Dakota Supreme Court states:

. . . [N.D.C.C. ' 54-01-26], providing rules for determining residence, uses the term [residence] as equivalent to domicil [or domicile]. . . .

. . . .

. . . Any act, event, or circumstance in the life of an individual may be evidence from which the state of mind [or intent] . . . may be inferred with more or less precision; and it is impossible to formulate any general rule by which the weight due to any particular point of evidence may be determined. . . .

. . . .

"The moving from one place of residence to another place with the intent to abandon the old residence and establish a residence at the new place, is in law a change of residence, which may be accomplished in one day \* \* \*." . . .

Schillerstrom, 32 N.W.2d 106, 115-116 (N.D. 1948).

In Northwestern Mortgage & Security Company v. Nowell Construction Company, 300 N.W. 28, 31 (N.D. 1941), the North Dakota Supreme Court states:

To effect the abandonment of one's domicil, there must be choice of a new domicil, actual residence in the place chosen, and intent that it be the principal and permanent residence. "

In conclusion, it is my opinion that petitioners in property exchange annexations must physically reside on the property sought to be annexed, must be 18 years of age or older, and must meet the definition of a resident based upon principles found in N.D.C.C. ' 54-01-26 and North Dakota Supreme Court cases. The county committee may consult with the county state's attorney pursuant to N.D.C.C. ' 15-27.1-05 for additional guidance in applying these criteria to a particular set of facts.

### III.

The final issue is whether the State Board of Public School Education must review the county committee's decision regarding the sufficiency of an annexation petition when that issue is raised on an appeal to the State Board.

The county committee is required to "determine the sufficiency of the petition and the required number of electors necessary to constitute a two-thirds majority." N.D.C.C. ' 15-27.2-01. The county committee must also review petitions for land exchanges. N.D.C.C. ' 15-27.2-02.

Any determination made by a single county committee may be appealed to the State Board. N.D.C.C. ' 15-27.2-04(11). In a multi-county situation, if the annexation is approved by a majority of one of the county committees, it is then submitted to the State Board for approval or disapproval. N.D.C.C. ' 15-27.2-04(7). When two county committees have considered an annexation petition and both have denied the annexation, the petitioner does not have the right to appeal to the State Board. 1988 N.D. Op. Att'y Gen. 119.

When an appeal is properly before the State Board, as outlined in the preceding paragraph, the State Board must address the sufficiency of the petition. To properly address the sufficiency of the petition the State Board must consider whether the annexation petition is signed by the required number of qualified electors for annexations generally, or by a resident or residents for land exchange annexations. The Board's consideration on this matter is required because the Board's jurisdiction over an appeal depends upon the sufficiency of the petition. If the petition is insufficient, the Board has no jurisdiction to hear the appeal. It is, therefore, my opinion that the State Board must review the county committee's decision regarding the sufficiency of the annexation petition when the appeal is otherwise properly before the State Board.

- EFFECT -

This opinion is issued pursuant to N.D.C.C. ' 54-12-01. It governs the actions of public officials until such time as the questions presented are decided by the courts.

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Enclosures